

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICKOLAS GORDON
KJELDERGAARD,

Plaintiff,

v.

CDCR, et al.,

Defendants.

No. 2:23-cv-2013 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by

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1 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account
2 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

8 The court has reviewed plaintiff's complaint and finds that it fails to state a claim upon
9 which relief can be granted under federal law. Plaintiff's complaint must be dismissed. The
10 court will, however, grant leave to file an amended complaint. The court provides the following
11 information to assist plaintiff in drafting an amended complaint.

12 1. Plaintiff complains about the way prisoner grievances have been addressed.
13 However, prisoners do not have "a separate constitutional entitlement to a specific prison
14 grievance procedure." Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v.
15 Adams, 855 F.2d 639, 640 (9th Cir. 1988)). Accordingly, the prison grievance procedure does
16 not confer any substantive constitutional rights upon inmates and actions in reviewing and
17 denying inmate appeals generally do not serve as a basis for liability under section 1983. Id.

18 2. It appears plaintiff complains about prisoner disciplinary proceedings which
19 resulted in the revocation of good conduct sentence credit. Any challenge to prisoner disciplinary
20 proceedings which resulted in the revocation of good conduct sentence credit must be brought in
21 a petition for writ of habeas corpus and not a 42 U.S.C. § 1983 action unless the revoked sentence
22 credit has been restored. See Edwards v. Balisok, 520 U.S. 641, 646-47 (1996).

23 3. Plaintiff attempts to sue state entities such as the California Department of
24 Corrections and Rehabilitation. The Eleventh Amendment serves as a jurisdictional bar to suits
25 brought by private parties against a state or state entity unless the state consents to such suit. See
26 Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam);
27 Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case, the State of
28 California has not consented to suit.

4. Plaintiff asserts violations of California law, but fails to plead compliance with the California Tort Claims Act. Plaintiff is informed that before he may proceed on a claim arising under California law in this court he must comply with the terms of the California Tort Claims Act, and then plead compliance. See Cal. Gov't Code § 910 et seq.; Mangold v. Cal. Pub. Utils. Comm'n, 67 F.3d. 1470, 1477 (9th Cir. 1995). Complaints must present facts demonstrating compliance, rather than simply conclusions suggesting as much. Shirk v. Vista Unified School Dist., 42 Cal.4th 201, 209 (2007).

5. Finally, plaintiff is informed that the court cannot refer to a prior pleading to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be complete without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).

In accordance with the above, IT IS HEREBY ORDERED that:


1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.

3. Plaintiff's complaint is dismissed.

4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of this order, the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned this case and must be labeled “Amended Complaint.” Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: October 17, 2023


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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